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10 Attorneys for Defendants
11 General Nutrition Centers, Inc.
12 and General Nutrition Corporation

13 UNITED STATES DISTRICT COURT
14
15 NORTHERN DISTRICT OF CALIFORNIA, OAKLAND DIVISION

16 GRADY JACKSON and KELLEY
17 ALEXANDER, in their representative capacity
18 pursuant to Cal. Bus. & Prof. Code §§ 17203,
19 17535 and Cal. Code Civ. Proc. §§ 382, 1021.5,

20 Plaintiffs,

21 v.

22 BALANCED HEALTH PRODUCTS, INC., a
23 Delaware Corporation, NIKKI HASKELL, an
24 individual, GENERAL NUTRITION
25 CORPORATION, a Pennsylvania Corporation,
26 and VITAMIN SHOPPE INDUSTRIES, INC.,
27 a New York Corporation, inclusive,

28 Defendants.

CASE NO. C 08-05584-CW

**JOINT STIPULATION FOR DISMISSAL;
~~PROPOSED~~ ORDER**

1 Pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(ii), Plaintiffs Grady Jackson and
2 Kelley Alexander in their individual capacities and as putative class representatives (collectively
3 “Plaintiffs”), and Defendants, Nikki Haskell (“Haskell”), Balanced Health Products, Inc. (“BHP”),
4 General Nutrition Corporation and General Nutrition Centers Inc. (“GNC”), and Vitamin Shoppe
5 Industries, Inc. (“VS”) (collectively “Defendants”) hereby stipulate as follows:

6 WHEREAS, Plaintiffs brought this action against Defendants in the Superior Court of
7 State of California, County of Alameda, and Defendants removed the action to the United States
8 District Court for the Northern District of California (the “Action”);

9 WHEREAS, the Action involved individual and class allegations related to the purchase
10 and sale of Starcaps, (the “Product”);

11 WHEREAS, the Parties engaged in an exchange of information regarding the distribution
12 and sale of the Product;

13 WHEREAS, Defendants filed a Rule 12(b) motion to dismiss which was denied in part and
14 granted in part by the Court;

15 WHEREAS, a class certification motion has not been filed;

16 WHEREAS, the Parties disagree as to whether a class can be certified in this Action;

17 WHEREAS, the Parties also disagree on whether liability can be established against each
18 of the Defendants;

19 WHEREAS, the Parties also disagree on the injury, if any, suffered by anyone who
20 purchased or used the Product;

21 WHEREAS, the Parties also disagree on the entitlement of any claimant to any remedies in
22 the Action;

23 WHEREAS, the Parties have engaged in multiple settlement discussions by telephone, e-
24 mail, and in person in which the facts and issues were explored and discussed;

25 WHEREAS, Defendants have engaged in direct settlement discussions under the mediated
26 guidance of Magistrate Judge Joseph C. Spero on April 1-2, 2009 and August 26, 2009;

27 WHEREAS, the principle terms of settlement were agreed upon on August 26, 2009 before
28 and with the assistance of Magistrate Judge Joseph C. Spero;

WHEREAS, the Parties have memorialized the terms of the settlement achieved before

1 Magistrate Judge Joseph C. Spero and entered into a settlement agreement (the “Settlement
2 Agreement”);

3 NOW, THEREFORE the Parties stipulate and agree as follows:

4 1. The parties, by their respective counsel, hereby stipulate to the dismissal, with
5 prejudice, of all claims asserted by Plaintiff Kelley Alexander in her individual capacity and as a
6 putative class representative, against Defendants.

7 2. The parties, by their respective counsel, hereby stipulate to the dismissal, without
8 prejudice, of all claims asserted by Plaintiff Grady Jackson in his individual capacity and as a
9 putative class representative, against Defendants.

10 3. GNC and VS agree to issue twenty-five dollar (\$25.00) discount coupons (the
11 “Discount Coupons”) which may be used in conjunction with a purchase of one hundred dollar
12 (\$100.00) or more from the issuing company’s store or internet site.

13 a. The Discount Coupons will be issued to Affinity Cardholders of GNC and
14 VS who purchased the Product during the period from December 1, 2007 and November
15 30, 2008 (“Covered Purchase Period”) and to direct internet customers of BHP who
16 purchased the Product during the Covered Purchase Period. “Affinity Cardholders” shall
17 mean members of the loyalty program of the particular company. The individuals to
18 whom Discount Coupons are issued are referred to herein as “Discount Coupon Holders.”

19 b. Only those GNC and VS Affinity Cardholders who have valid current U.S.
20 mail or e-mail addresses (registered with their affinity card company) and who purchased
21 the Product during the Covered Purchase Period will receive a Discount Coupon.

22 c. Only BHP customers who purchased through BHP’s direct internet sites
23 and have a valid U.S. mail or e-mail address (registered with BHP) and who purchased the
24 Product during the Covered Purchase Period (according to BHP’s records) will receive a
25 Discount Coupon.

26 d. GNC and VS may restrict the use of the Discount Coupons so that they may
27 not be used in conjunction with any other coupon, promotion, sale, or discount.

28 e. The Discount Coupons shall be valid only for 90 days from the date of their
issue to each Discount Coupon Holder.

4. GNC will issue one (1) Discount Coupon to GNC Affinity Cardholders for every bottle of Product purchased by the GNC Affinity Cardholder (according to the records of GNC) during the Covered Purchase Period, up to a maximum of four (4) coupons per Affinity Cardholder.

5. VS will issue one (1) Discount Coupon to VS Affinity Cardholders for every bottle of Product purchased by the VS Affinity Cardholder (according to the records of VS) during the Covered Purchase Period, up to a maximum of four (4) coupons per Affinity Cardholder.

6. Persons who purchased directly from BHP's internet sites and who have valid current U.S. mail or e-mail addresses registered with BHP will receive one Discount Coupon (issued by either GNC or VS) for every bottle of Product purchased in an internet sale directly from the BHP website during the Covered Purchase Period up to a maximum of four (4) coupons per purchaser.

a. GNC and VS will each issue one half (50%) of the total number of Discount Coupons to be issued to BHP Product purchasers.

b. Each direct internet BHP Product purchaser will receive Discount Coupons from either GNC or VS, but not from both.

c. GNC and VS will work with BHP to divide BHP's direct internet Product purchaser list in a way that effectively causes GNC and VS to each issue 50% of the total Discount Coupons issued to BHP's direct internet Product purchasers.

7. A notice sent with the Discount Coupon will expressly provide that the use of any Discount Coupon will release all of the Defendants from any and all liability to the person to whom the Discount Coupon was issued, arising out of the facts and circumstances described in the Action.

8. Individual Incentive Award. Plaintiff Kelley Alexander will receive \$2,500 as an individual incentive award for her services as a putative class representative.

9. Charitable Contribution. GNC and VS will each make a charitable contribution of \$5,000 to the University of California at Los Angeles Center for Human Nutrition.

1 10. Attorneys Fees/Costs – GNC and VS. Defendants GNC and VS will each pay
 2 sixty-two thousand five hundred (\$62,500) to Plaintiffs' counsel for attorneys fees and costs in the
 3 following manner:

- 4 a. Upon dismissal of this Action, VS will pay \$62,500 to Plaintiffs' counsel.
 5 b. Upon dismissal of this Action, GNC will pay \$62,500 to Plaintiffs' counsel.

6 11. Attorneys Fees/Costs – Haskell and BHP. Defendants Haskell and BHP will pay
 7 Plaintiffs' counsel for attorneys fees and costs in the following manner:

8 a. Upon execution of this Agreement, Haskell and BHP will pay \$25,000 to
 9 Plaintiffs attorneys to be held in their attorney client trust account. If and when Judge
 10 Wilken approves and enters the dismissal such funds may be distributed to Plaintiffs
 11 Attorneys. If Judge Wilken denies the dismissal, Plaintiffs attorneys shall return the
 12 moneys held in the trust account within five business days.

13 b. On or before December 1, 2009, Haskell and BHP will pay an additional
 14 \$25,000 directly to Plaintiffs' counsel if this Action has been dismissed or into the same
 15 escrow account at the direction of Plaintiffs' counsel which shall be distributed to
 16 Plaintiffs' counsel upon the dismissal of this Action.

17 c. Defendants Haskell and BHP each individually and jointly agree to secure
 18 their payment of attorneys' fees by a stipulated judgment in favor of Plaintiffs' attorneys.

19 12. Release – Named Putative Class Representative Plaintiffs. Except for the rights
 20 and obligations contained in or arising out of the Settlement Agreement entered into between the
 21 parties, the named putative class representative Plaintiff Kelley Alexander releases Defendants and
 22 their respective attorneys, insurers, parent companies, affiliates, subsidiaries, related companies,
 23 directors, officers, shareholders, owners, employees, agents, representatives, successors and
 24 assigns, from any and all claims, whether known or unknown, suspected or not, arising out of the
 25 facts described in the Action.

26 13. Release – Discount Coupon Holders. Except for the rights and obligations
 27 contained in or arising out of the Settlement Agreement entered into between the parties, Discount
 28 Coupon Holders who use or allow another to use the Discount Coupons will, by such use of the
 Discount Coupons, release Defendants, their respective attorneys, insurers, parent companies,

1 affiliates, subsidiaries, related companies, directors, officers, shareholders, owners, employees,
 2 agents, representatives, successors and assigns, from any and all claims, whether known or
 3 unknown, suspected or not, arising out of the facts described in the Action.

4 14. This stipulation is electronically signed on behalf of all parties who have appeared
 5 in this action. Except as provided in the Settlement Agreement and this Joint Stipulation for
 6 Dismissal, each party shall bear its own costs, attorney's fees and expenses.

7 **SO STIPULATED:**

8 PINNACLE LAW GROUP, LLP

FARBER & COMPANY ATTORNEYS

9 By: /s/ Andrew A. August
 10 Andrew A. August
 11 Attorneys for Plaintiffs
 12 GRADY JACKSON and KELLY
 ALEXANDER

By: /s/ Eric J. Farber
 Eric J. Farber
 Attorneys for Plaintiffs
 GRADY JACKSON and KELLY
 ALEXANDER

13 LAW OFFICES OF DAVID GERNSBACHER

MCGUIRE WOODS LLP

14 By: /s/ David Gernsbacher
 15 David Gernsbacher
 16 Attorney for Defendants
 17 BALANCED HEALTH PRODUCTS,
 INC. and NIKKI HASKELL

By: /s/ Sidney K. Kanazawa
 Sidney K. Kanazawa
 Attorneys for Defendants
 GENERAL NUTRITION
 CORPORATION and GENERAL
 NUTRITION CENTERS, INC.

18 HOLME, ROBERTS & OWEN LLP

19 By: /s/ Roger R. Myers
 20 Roger R. Myers
 21 Adam Brezine
 22 Attorneys for Defendant
 23 VITAMIN SHOPPE INDUSTRIES INC.

24 **IT IS SO ORDERED.**

25 DATED: 10/27/09



26
 27 Hon. Claudia Wilken
 28 UNITED STATES DISTRICT JUDGE

ATTESTATION OF CONCURRENCE IN FILING

Pursuant to N.D. Cal. General Order 45 section 45X(B), Sidney K. Kanazawa hereby attests that concurrence in the filing of this stipulation and proposed order has been obtained from counsel for the non-filing parties.

/S/ Sidney K. Kanazawa
Sidney K. Kanazawa
Attorneys for Defendants General Nutrition
Centers and General Nutrition Corporation

CERTIFICATE OF SERVICE

I, Sidney K. Kanazawa, certify that on October 23, 2009, the foregoing **JOINT STIUPULATION FOR DISMISSAL; [PROPOSED] ORDER** was filed electronically in the Court's ECF; thereby upon completion the ECF system automatically generated a "Notice of Electronic Filing" ("NEF") as service through CM/ECF to registered e-mail addresses of parties of record in the case, in particular on the following:

Andrew A. August	Attorneys for Plaintiffs
aaugust@pinnaclelawgroup.com	Grady Jackson and Kelly Alexander

Eric J. Farber	Attorneys for Plaintiffs
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David L. Gernsbacher	Attorneys for Defendants
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Roger R. Myers	Attorneys for Defendant
Roger.Myers@hro.com	Vitamin Shoppe Industries, Inc.

/s/ Sidney K. Kanazawa _____
Sidney K. Kanazawa